

Amendments to the Drawings:

The drawing sheets attached in connection with the above-identified application containing FIGS. 1 and 2 are being presented as new formal replacement drawing sheets to be substituted for the previously submitted drawing sheets. In particular, FIG. 1 has been amended.

The specific changes, which have been made to FIG. 1, are: (i) a reference numeral (19) for a suitable material has been added; and (ii) the reference numeral (18) for the inner layer has been moved. No new matter has been added.

REMARKS

Status of the Claims:

Claims 1-3, 5-6, 8, 10-14, 19-24, 27, 29, 32, 38, and 43-46 have been amended. Claims 47-49 have been added. Claims 4 and 7 have been cancelled. After amending the claims as set forth above, claims 1-14, 17-25, 27, and 29-49 are now pending in this application.

Amendments to Specification:

The amendment replacing paragraph [0037] adds a reference numeral (19) for the suitable material coating the COPE inner layer. No new matter has been added.

Amendments to Drawings:

The amendment replacing FIG. 1 adds a reference numeral (19) for the suitable material coating the COPE inner layer. No new matter has been added.

Interview Summary

Applicant expresses appreciation to the Examiner (Ms. Victoria Campbell) for the courtesy of the interview conducted on May 4, 2009 with the Applicant's representative (Mr. Michael F. Taveira). The issues discussed in the interview included claim 32 and the Examiner's comments in the Office Action dated February 12, 2009 (e.g., p. 9 ll. 13-19). In particular, the Applicant's representative and the Examiner agreed that a tubing having an innermost peripheral surface made of copolyester (COPE) material would be distinguished from the cited prior art.

I. Objection to Drawings:

The drawings were objected to under 37 CFR 1.83(a) for failing to show every feature of the invention specified in the claims. In particular, the drawings were objected to because the drawings failed to show a suitable material coating on an inner surface of the tubing as claimed

in claim 46. Accordingly, FIG. 1 has been amended to include a reference numeral (19) indicating the suitable material coating on the inner surface of the tubing as in claim 46.

As such, Applicant believes the drawings are now in compliance with 37 CFR 1.121(d), and therefore Applicant respectfully requests the objection be withdrawn.

II. Claim Rejections – 35 U.S.C. § 112

Claim 6 has been rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Accordingly, claim 6 has been amended to recite, among other features, “wherein the at least one layer of COPE material includes a first layer compatible with the fluidic media; wherein the tubing further comprises at least one second layer for bonding at least one third layer to the first layer; and wherein the at least one layer of COPE material further comprises the at least one third layer.”

As such, Applicant believes amended claim 6 is in compliance with 35 U.S.C. 112, and therefore Applicant respectfully requests the rejection of claim 6 be withdrawn.

III. Claim Rejections – 35 U.S.C. § 102 - Donohue

Claims 32, 1, 5, 8, 10, 11, 33, 34, 43-46, 38, 39, 21, 24, 25, 27, and 29-31 have been rejected under 35 U.S.C. 102 (a) as being anticipated by Donohue et al. (WO 03/064909 A1) (Donohue). These rejections are respectfully traversed in view of the claims as amended herein.

Independent claim 32, as amended, recites:

A tubing for conveying a fluidic media, the tubing comprising at least one layer of copolyester ether (COPE) material selected to be suitably compatible with the fluidic media, wherein the at least one layer of COPE material comprises an

outer surface defining an outer peripheral surface of the tubing and an inner surface defining an innermost peripheral surface of the tubing.

(Similar features are found in independent claims 38)

Claim 32 is neither taught, suggested, nor rendered predictable by the Donohue reference. In particular, claim 32 recites a tubing that includes, among other features, at least one layer of COPE material, the at least one layer of COPE material comprises an outer surface defining an outer peripheral surface of the tubing and an inner surface defining an innermost peripheral surface of the tubing.

Thus, at least one layer of COPE material has an outer surface that is an outer peripheral surface of the tubing and an inner surface that is an **innermost** peripheral surface of the tubing. The Donohue reference does not disclose or suggest a tubing, as recited in claim 32, including these features.

According to the Examiner, the Donohue reference discloses a tubing (1) for conveying fluidic media comprising at least one layer of COPE (Paragraph [0016]) where the at least one layer of COPE comprises an outer surface defining an outer peripheral surface of the tubing and an inner surface defining an inner peripheral surface of the tubing. *See* p. 4 ll. 10-15 of the Office Action dated February 12, 2009 (*Office Action*).

However, in contrast to amended claim 32, the inner surface of the layer of COPE material is not the innermost peripheral surfacing of the tubing in the Donohue reference. Indeed, an inner layer (3) of the Donohue reference is the innermost layer of the tubing – not the COPE layer. It is this inner layer that is the innermost surface of the tubing that, for example,

contacts fluidic media flowing through the tubing. *See* paragraph [0017] of the Donohue reference. *See also* new claims 47 and 48 of the pending application; Response to the Office Action dated April 29, 2008 (arguing same), herein incorporated by reference in its entirety; Examiner's comments on p. 9 ll. 13-19 of *Office Action* (commenting on Response).

Furthermore, the Donohue reference specifically discloses that the inner(most) layer is made of polyethylene or thermoplastic polyurethane elastomer. *See* paragraphs [0015] and [0017] of the Donohue reference. Again, this is in contrast to amended claim 32, which recites that the innermost layer of the tubing is a COPE material layer.

As such, the Donohue reference does not disclose or suggest a tubing including at least one layer of COPE material having an outer surface that is an outer peripheral surface of the tubing and an inner surface that is an innermost peripheral surface of the tubing. Therefore, the Donohue reference does not anticipate amended claim 32.

Therefore, for at least the reasons above, the Donohue reference does not anticipate, suggest, or render predictable independent claims 32 and 38. Claims 1, 5, 8, 10, 11, 33, 34, and 43-46 depend from claim 32 (directly or indirectly) and are believed to be allowable for at least the same reasons as claim 32 is believed to be allowable. Claims 39, 21, 24, 25, 27, and 29-31 depend from claim 38 (directly or indirectly) and are believed to be allowable for at least the same reasons as claim 38 is believed to be allowable. Accordingly, the rejections of claims 32, 1, 5, 8, 10, 11, 33, 34, 43-46, 38, 39, 21, 24, 25, 27, and 29-31, as amended herein, are respectfully traversed.

IV. Claim Rejections – 35 U.S.C. § 103

A. The Donohue Reference

Claims 6, 9, 35-37, 40-42, 22, 23, 2-4, and 7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Donohue. These rejections are respectfully traversed in view of the claims as amended herein.

Claims 6, 9, 35-37, 40-42, 22, 23, 2-4, and 7 depend from claims 32 and 38 (directly or indirectly) and are believed to be allowable for at least the same reasons as claims 32 and 38 are believed to be allowable. Specifically, as discussed above, the Donohue reference does not disclose a tubing including at least one layer of COPE material having an outer surface that is an outer peripheral surface of the tubing and an inner surface that is an **innermost** peripheral surface of the tubing. According to the Examiner, the use of multiple layers of COPE tubing is a duplication of parts. *See* p. 7 l. 5 to p. 8 l. 16 of *Office Action*. However, the Examiner's argument does not address the recited feature lacking in the Donohue reference.

To establish a prima facie obviousness of a claim invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because neither the Donohue reference nor the Examiner's arguments addresses the recited features, there can be no prima facie obviousness by seeking to combine the Donohue reference and the Examiner's argument. Thus, claims 6, 9, 35-37, 40-42, 22, 23, 2-4, and 7 are believed to be allowable. Accordingly, the rejections of claims 6, 9, 35-37, 40-42, 22, 23, 2-4, and 7, as amended herein, are respectfully traversed.

B. The Donohue and Moberg References

Claims 12-14 and 17-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Donohue and Moberg (USPN 6,248,093). These rejections are respectfully traversed in view of the claims as amended herein.

Claims 12-14 and 17-20 depend from claims 32 and 38 (directly or indirectly) and are believed to be allowable for at least the same reasons as claims 32 and 38 are believed to be allowable. Specifically, as discussed above, the Donohue reference does not disclose a tubing including at least one layer of COPE material having an outer surface that is an outer peripheral surface of the tubing and an inner surface that is an **innermost** peripheral surface of the tubing. According to the Examiner, the Moberg reference teaches a drug delivery system (Fig. 1) combining a pump (101, 102, 103, 104), reservoir (105), and tubing (106) for the delivery of insulin (Col. 1, lines 14-16). *See p. p. 8 ll. 20-22 of Office Action.* However, the Examiner's argument does not address the recited feature lacking in the Donohue reference.

To establish a *prima facie* obviousness of a claim invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because none of the references disclose or suggest the recited features, there can be no *prima facie* obviousness by seeking to combine these references. Thus, claims 12-14 and 17-20 are believed to be allowable. Accordingly, the rejections of claims 12-14 and 17-20, as amended herein, are respectfully traversed.

V. New Claims:

New claims 47-49 are added to further protect additional features of the present invention.

Claim 47 generally recites, among other features, the innermost surface of the tubing defining an inner channel through which the fluidic media flows, the innermost surface of the tubing for contacting the fluidic media. This claim is supported by the original application, for example, at paragraph(s) [0037] and Fig(s). 1 disclosing an inner channel defined by the innermost surface of the tubing, and that the innermost surface may come in contact with fluidic media passing through the tubing. This claim is not disclosed in the cited reference(s). Moreover, this claim is believed to be allowable at least for the reasons of its parent claims and/or the reasons previously discussed.

Claims 48 and 49 generally recite, among other features, the innermost surface of the tubing for contacting the fluidic media. These claims are supported by the original application, for example, at paragraph(s) [0037] and Fig(s). 1 disclosing that the inner surface of a COPE inner layer may come in contact with fluidic media passing through the tubing. These claims are not disclosed in the cited reference(s). Moreover, these claims are believed to be allowable at least for the reasons of their parent claims and/or the reasons previously discussed.

VI. Conclusion:

Accordingly, the rejections of claims 6, 9, 35-37, 40-42, 22, 23, 2-4, 7, 12-14 and 17-20 as amended herein, are respectfully traversed.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

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